

Claimant alleges accidental injury on May 18, 1990 with an amended accidental injury claimed at regular hearing to include a series of injuries through December 31, 1992. Claimant continued working for respondent in its Wichita office until December 31, 1992, when the office was closed. The parties stipulated written claim was provided by claimant on November 23, 1992.

K.S.A. 44-520a requires that the claimant must file written claim within two hundred (200) days of the date of accident or, if the employer fails to file an accident report within twenty-eight (28) days after receiving knowledge of claimant's personal injury as is required by K.S.A. 44-557, the time limitations for filing written claim shall be expanded to one year from the date of accident, suspension of payment of disability compensation, date of last medical treatment authorized by the employer or death of the employee.

In this case, claimant's written claim of November 23, 1992, is well beyond one year from the original date of accident of May 18, 1990. In order for claimant's written claim to be timely it must be found, from the facts in this case, that claimant suffered a series of accidental injuries at least through two hundred (200) days preceding November 23, 1992.

Medical records stipulated into evidence include the St. Francis Emergency Room records of May 29, 1990. On that date claimant went into the hospital with complaints of low back pain which, according to the medical records, he had suffered some twelve hours previously. The medical records of Dr. David Sollo of November 6, 1991, indicated claimant was suffering from back pain with radiculopathy into his legs. Claimant presented a four-month history of back pain to Dr. Sollo and denied a history of trauma to his back. K.S.A. 44-501 and K.S.A. 44-508(g) make it claimant's burden of proof to establish claimant's right to an award of compensation and to prove the various conditions upon which claimant's right depends by a preponderance of the credible evidence.

The Appeals Board finds, based upon the evidence presented, claimant has failed to prove by a preponderance of the credible evidence that he suffered accidental injury through a series of accidents culminating on December 31, 1992. The medical evidence verifying an accident on May 18, 1990, while shaky, could establish claimant suffered accidental injury on that date arising out of and in the course of his employment. However, absent evidence of injury or aggravation subsequent to May 18, 1990, the Appeals Board must find that claimant has failed to prove written claim was timely filed pursuant to the requirements of K.S.A. 44-520a. Having so found, the Appeals Board finds it unnecessary to decide Issue Number (2).

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge George R. Robertson dated June 21, 1994, should be, and is hereby, affirmed and that the claimant, Chris Nichols, is denied an award against the respondent, Commercial Sound Company, Commercial Union Insurance Company and American States Insurance Company.

Fees necessary to defray the expense of administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Barbara J. Terrell & Associates	
Deposition of Dr. Ernest Schlachter	\$ 65.50
Dated June 21, 1993	
Deposition of Monty Longacre	\$ 81.50
Dated June 21, 1993	

Owens, Brake & Associates

Regular Hearing Transcript Dated September 23, 1993	\$240.80
Angela Schultz, C.S.R. Deposition of Gary Dunn Dated September 22, 1993	\$ 74.00
Deposition of Mary Schamle Dated January 28, 1994	\$ 95.76

IT IS SO ORDERED.

Dated this ____ day of March 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Timothy J. King, Wichita, KS
Kip A. Kubin, Overland Park, KS
George R. Robertson, Administrative Law Judge
Philip S. Harness, Director